

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1103

Introduced by Assembly Member Huffman

February 18, 2011

An act to amend ~~Section~~ *Sections 65583.1 and 65583.2* of, and to add *Section 65584.11* to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1103, as amended, Huffman. Land use: housing element.

~~The~~

(1) The Planning and Zoning Law requires a city or county to prepare and adopt a comprehensive, long-term general plan, and requires the general plan to include specified, mandatory elements, including a housing element. That law requires the housing element, in turn, to contain, among other items, an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of those needs. That law requires that assessment and inventory, in turn, to include an inventory of land suitable for residential development.

That law further requires the inventory of land suitable for residential development to be used to identify sites that can be developed for housing, as specified, and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels.

~~This bill would make a technical, nonsubstantive change to that law.~~

This bill would provide that a city or county may request its council of governments to adjust the city's or county's densities for the city's or county's share of regional housing need for lower income households based on a demonstration by the city or county that the density is not

consistent with the city's or county's designation as nonmetropolitan, suburban, or metropolitan.

The bill would also specify that a city or county may meet the appropriate regional housing needs assessment without using land use controls to set aside the appropriate densities throughout the jurisdiction.

The bill would also authorize a local government to count each housing unit that meets the requirements of the jurisdiction's sustainable communities strategy as 1½ units for purposes of meeting the local government's regional housing needs assessment.

(2) The Planning and Zoning Law authorizes the Department of Housing and Community Development to allow a city or county to substitute the provision of units for up to 25% of the city's or county's obligation to identify adequate sites for any income category in its housing element if the city or county includes in its housing element a program committing the city or county to provide units in that income category within the city or county that will be made available through the provision of committed assistance, during the planning period covered by the element, to very low and low-income households at affordable housing costs or affordable rents, as defined. In order for a unit to qualify for inclusion in the program, it must meet one of several, specified criteria.

This bill would add to that list of potential criteria, until January 1, 2017, the additional criterion of being located on foreclosed property and converted with committed assistance from the city or county from nonaffordable to very low and low-income households to affordable to those households.

The bill would also add to that list of potential criteria the additional criterion of being a 2nd unit on a property that is converted from nonaffordable to very low and low-income housing.

*Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.*

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 65583.1 of the Government Code is*
- 2 *amended to read:*
- 3 *65583.1. (a) The Department of Housing and Community*
- 4 *Development, in evaluating a proposed or adopted housing element*
- 5 *for substantial compliance with this article, may allow a city or*

1 county to identify adequate sites, as required pursuant to Section
2 65583, by a variety of methods, including, but not limited to,
3 redesignation of property to a more intense land use category and
4 increasing the density allowed within one or more categories. The
5 department may also allow a city or county to identify sites for
6 second units based on the number of second units developed in
7 the prior housing element planning period whether or not the units
8 are permitted by right, the need for these units in the community,
9 the resources or incentives available for their development, and
10 any other relevant factors, as determined by the department.
11 Nothing in this section reduces the responsibility of a city or county
12 to identify, by income category, the total number of sites for
13 residential development as required by this article.

14 (b) Sites that contain permanent housing units located on a
15 military base undergoing closure or conversion as a result of action
16 pursuant to the Defense Authorization Amendments and Base
17 Closure and Realignment Act (Public Law 100-526), the Defense
18 Base Closure and Realignment Act of 1990 (Public Law 101-510),
19 or any subsequent act requiring the closure or conversion of a
20 military base may be identified as an adequate site if the housing
21 element demonstrates that the housing units will be available for
22 occupancy by households within the planning period of the
23 element. No sites containing housing units scheduled or planned
24 for demolition or conversion to nonresidential uses shall qualify
25 as an adequate site.

26 Any city, city and county, or county using this subdivision shall
27 address the progress in meeting this section in the reports provided
28 pursuant to paragraph (1) of subdivision (b) of Section 65400.

29 (c) (1) The Department of Housing and Community
30 Development may allow a city or county to substitute the provision
31 of units for up to 25 percent of the community's obligation to
32 identify adequate sites for any income category in its housing
33 element pursuant to paragraph (1) of subdivision (c) of Section
34 65583 where the community includes in its housing element a
35 program committing the local government to provide units in that
36 income category within the city or county that will be made
37 available through the provision of committed assistance during
38 the planning period covered by the element to low- and very low
39 income households at affordable housing costs or affordable rents,
40 as defined in Sections 50052.5 and 50053 of the Health and Safety

1 Code, and which meet the requirements of paragraph (2). Except
2 as otherwise provided in this subdivision, the community may
3 substitute one dwelling unit for one dwelling unit site in the
4 applicable income category. The program shall do all of the
5 following:

6 (A) Identify the specific, existing sources of committed
7 assistance and dedicate a specific portion of the funds from those
8 sources to the provision of housing pursuant to this subdivision.

9 (B) Indicate the number of units that will be provided to both
10 low- and very low income households and demonstrate that the
11 amount of dedicated funds is sufficient to develop the units at
12 affordable housing costs or affordable rents.

13 (C) Demonstrate that the units meet the requirements of
14 paragraph (2).

15 (2) Only units that comply with subparagraph (A), (B), ~~or (C)~~
16 (C), (D), or (e) qualify for inclusion in the housing element
17 program described in paragraph (1), as follows:

18 (A) Units that are to be substantially rehabilitated with
19 committed assistance from the city or county and constitute a net
20 increase in the community's stock of housing affordable to low-
21 and very low income households. For purposes of this
22 subparagraph, a unit is not eligible to be "substantially
23 rehabilitated" unless all of the following requirements are met:

24 (i) At the time the unit is identified for substantial rehabilitation,
25 (I) the local government has determined that the unit is at imminent
26 risk of loss to the housing stock, (II) the local government has
27 committed to provide relocation assistance pursuant to Chapter 16
28 (commencing with Section 7260) of Division 7 of Title 1 to any
29 occupants temporarily or permanently displaced by the
30 rehabilitation or code enforcement activity, or the relocation is
31 otherwise provided prior to displacement either as a condition of
32 receivership, or provided by the property owner or the local
33 government pursuant to Article 2.5 (commencing with Section
34 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and
35 Safety Code, or as otherwise provided by local ordinance; provided
36 the assistance includes not less than the equivalent of four months'
37 rent and moving expenses and comparable replacement housing
38 consistent with the moving expenses and comparable replacement
39 housing required pursuant to Section 7260, (III) the local
40 government requires that any displaced occupants will have the

1 right to reoccupy the rehabilitated units, and (IV) the unit has been
2 found by the local government or a court to be unfit for human
3 habitation due to the existence of at least four violations of the
4 conditions listed in subdivisions (a) to (g), inclusive, of Section
5 17995.3 of the Health and Safety Code.

6 (ii) The rehabilitated unit will have long-term affordability
7 covenants and restrictions that require the unit to be available to,
8 and occupied by, persons or families of low- or very low income
9 at affordable housing costs for at least 20 years or the time period
10 required by any applicable federal or state law or regulation.

11 (iii) Prior to initial occupancy after rehabilitation, the local code
12 enforcement agency shall issue a certificate of occupancy indicating
13 compliance with all applicable state and local building code and
14 health and safety code requirements.

15 (B) Units that are located in a multifamily rental or ownership
16 housing complex of three or more units, are converted with
17 committed assistance from the city or county from nonaffordable
18 to affordable by acquisition of the unit or the purchase of
19 affordability covenants and restrictions for the unit, are not acquired
20 by eminent domain, and constitute a net increase in the
21 community's stock of housing affordable to low- and very low
22 income households. For purposes of this subparagraph, a unit is
23 not converted by acquisition or the purchase of affordability
24 covenants unless all of the following occur:

25 (i) The unit is made available for rent at a cost affordable to
26 low- or very low income households.

27 (ii) At the time the unit is identified for acquisition, the unit is
28 not available at an affordable housing cost to either of the
29 following:

30 (I) Low-income households, if the unit will be made affordable
31 to low-income households.

32 (II) Very low income households, if the unit will be made
33 affordable to very low income households.

34 (iii) At the time the unit is identified for acquisition the unit is
35 not occupied by low- or very low income households or if the
36 acquired unit is occupied, the local government has committed to
37 provide relocation assistance prior to displacement, if any, pursuant
38 to Chapter 16 (commencing with Section 7260) of Division 7 of
39 Title 1 to any occupants displaced by the conversion, or the
40 relocation is otherwise provided prior to displacement; provided

1 the assistance includes not less than the equivalent of four months’
2 rent and moving expenses and comparable replacement housing
3 consistent with the moving expenses and comparable replacement
4 housing required pursuant to Section 7260.

5 (iv) The unit is in decent, safe, and sanitary condition at the
6 time of occupancy.

7 (v) The unit has long-term affordability covenants and
8 restrictions that require the unit to be affordable to persons of low-
9 or very low income for not less than 55 years.

10 (vi) For units located in multifamily ownership housing
11 complexes with three or more units, at least an equal number of
12 new-construction multifamily rental units affordable to lower
13 income households have been constructed in the city or county
14 within the same planning period as the number of ownership units
15 to be converted.

16 (C) Units that will be preserved at affordable housing costs to
17 persons or families of low- or very low incomes with committed
18 assistance from the city or county by acquisition of the unit or the
19 purchase of affordability covenants for the unit. For purposes of
20 this subparagraph, a unit shall not be deemed preserved unless all
21 of the following occur:

22 (i) The unit has long-term affordability covenants and
23 restrictions that require the unit to be affordable to and reserved
24 for occupancy by persons of the same or lower income group as
25 the current occupants for a period of at least 40 years.

26 (ii) The unit is within an “assisted housing development,” as
27 defined in paragraph (3) of subdivision (a) of Section 65863.10.

28 (iii) The city or county finds, after a public hearing, that the unit
29 is eligible, and is reasonably expected, to change from housing
30 affordable to low- and very low income households to any other
31 use during the next five years due to termination of subsidy
32 contracts, mortgage prepayment, or expiration of restrictions on
33 use.

34 (iv) The unit is in decent, safe, and sanitary condition at the
35 time of occupancy.

36 (v) At the time the unit is identified for preservation it is
37 available at affordable cost to persons or families of low- or very
38 low income.

39 (D) *Units that are second units on a property and are converted*
40 *from nonaffordable to very low and low-income housing.*

1 (E) (i) *Units that are located on foreclosed property that will*
2 *be converted with committed assistance from the city or county*
3 *from nonaffordable to very low and low-income households.*

4 (ii) *This subparagraph shall remain in effect only until January*
5 *1, 2017.*

6 (3) This subdivision does not apply to any city or county that,
7 during the current or immediately prior planning period, as defined
8 by Section 65588, has not met any of its share of the regional need
9 for affordable housing, as defined in Section 65584, for low- and
10 very low income households. A city or county shall document for
11 any housing unit that a building permit has been issued and all
12 development and permit fees have been paid or the unit is eligible
13 to be lawfully occupied.

14 (4) For purposes of this subdivision, “committed assistance”
15 means that the city or county enters into a legally enforceable
16 agreement during the period from the beginning of the projection
17 period until the end of the second year of the planning period that
18 obligates sufficient available funds to provide the assistance
19 necessary to make the identified units affordable and that requires
20 that the units be made available for occupancy within two years
21 of the execution of the agreement. “Committed assistance” does
22 not include tenant-based rental assistance.

23 (5) For purposes of this subdivision, “net increase” includes
24 only housing units provided committed assistance pursuant to
25 subparagraph (A) or (B) of paragraph (2) in the current planning
26 period, as defined in Section 65588, that were not provided
27 committed assistance in the immediately prior planning period.

28 (6) For purposes of this subdivision, “the time the unit is
29 identified” means the earliest time when any city or county agent,
30 acting on behalf of a public entity, has proposed in writing or has
31 proposed orally or in writing to the property owner, that the unit
32 be considered for substantial rehabilitation, acquisition, or
33 preservation.

34 (7) In the third year of the planning period, as defined by Section
35 65588, in the report required pursuant to Section 65400, each city
36 or county that has included in its housing element a program to
37 provide units pursuant to subparagraph (A), (B), or (C) of
38 paragraph (2) shall report in writing to the legislative body, and
39 to the department within 30 days of making its report to the
40 legislative body, on its progress in providing units pursuant to this

subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

~~SECTION 1.~~

SEC. 2. Section 65583.2 of the Government Code is amended to read:

65583.2. (a) A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels ~~determined~~ pursuant to Section 65584. As used in this section, "land suitable for residential development" includes all of the following:

- (1) Vacant sites zoned for residential use.
- (2) Vacant sites zoned for nonresidential use that allows residential development.
- (3) Residentially zoned sites that are capable of being developed at a higher density.

1 (4) Sites zoned for nonresidential use that can be redeveloped
2 for, and as necessary, rezoned for, residential use.

3 (b) The inventory of land shall include all of the following:

4 (1) A listing of properties by parcel number or other unique
5 reference.

6 (2) The size of each property listed pursuant to paragraph (1),
7 and the general plan designation and zoning of each property.

8 (3) For nonvacant sites, a description of the existing use of each
9 property.

10 (4) A general description of any environmental constraints to
11 the development of housing within the jurisdiction, the
12 documentation for which has been made available to the
13 jurisdiction. This information need not be identified on a
14 site-specific basis.

15 (5) A general description of existing or planned water, sewer,
16 and other dry utilities supply, including the availability and access
17 to distribution facilities. This information need not be identified
18 on a site-specific basis.

19 (6) Sites identified as available for housing for above
20 moderate-income households in areas not served by public sewer
21 systems. This information need not be identified on a site-specific
22 basis.

23 (7) A map that shows the location of the sites included in the
24 inventory, such as the land use map from the jurisdiction's general
25 plan for reference purposes only.

26 (c) Based on the information provided in subdivision (b), a city
27 or county shall determine whether each site in the inventory can
28 accommodate some portion of its share of the regional housing
29 need by income level during the planning period, as determined
30 pursuant to Section 65584. The analysis shall determine whether
31 the inventory can provide for a variety of types of housing,
32 including multifamily rental housing, factory-built housing,
33 mobilehomes, housing for agricultural employees, emergency
34 shelters, and transitional housing. The city or county shall
35 determine the number of housing units that can be accommodated
36 on each site as follows:

37 (1) If local law or regulations require the development of a site
38 at a minimum density, the department shall accept the planning
39 agency's calculation of the total housing unit capacity on that site
40 based on the established minimum density. If the city or county

1 does not adopt a law or regulations requiring the development of
2 a site at a minimum density, then it shall demonstrate how the
3 number of units determined for that site pursuant to this subdivision
4 will be accommodated.

5 (2) The number of units calculated pursuant to paragraph (1)
6 shall be adjusted as necessary, based on the land use controls and
7 site improvements requirement identified in paragraph (5) of
8 subdivision (a) of Section 65583.

9 (3) For the number of units calculated to accommodate its share
10 of the regional housing need for lower income households pursuant
11 to paragraph (2), a city or county shall do either of the following:

12 (A) Provide an analysis demonstrating how the adopted densities
13 accommodate this need. The analysis shall include, but is not
14 limited to, factors such as market demand, financial feasibility, or
15 information based on development project experience within a
16 zone or zones that provide housing for lower income households.

17 (B) The following densities shall be deemed appropriate to
18 accommodate housing for lower income households:

19 (i) For incorporated cities within nonmetropolitan counties and
20 for nonmetropolitan counties that have micropolitan areas: sites
21 allowing at least 15 units per acre.

22 (ii) For unincorporated areas in all nonmetropolitan counties
23 not included in clause (i): sites allowing at least 10 units per acre.

24 (iii) For suburban jurisdictions: sites allowing at least 20 units
25 per acre.

26 (iv) For jurisdictions in metropolitan counties: sites allowing
27 at least 30 units per acre.

28 (4) *A city or county may request the city's or county's council*
29 *of governments to adjust the densities specified in subparagraph*
30 *(B) of paragraph (3) based on a demonstration by the city or county*
31 *that the density is not consistent with the city's or county's*
32 *designation as nonmetropolitan, suburban, or metropolitan.*

33 (5) *For purposes of clauses (i) through (iv), inclusive, of*
34 *subparagraph (B) of paragraph (3), a city or county may meet the*
35 *appropriate regional housing needs assessment without using land*
36 *use controls to set aside the appropriate densities throughout the*
37 *jurisdiction.*

38 (d) For purposes of this section, metropolitan counties,
39 nonmetropolitan counties, and nonmetropolitan counties with
40 micropolitan areas are as determined by the United States Census

1 Bureau. Nonmetropolitan counties with micropolitan areas include
2 the following counties: Del Norte, Humboldt, Lake, Mendocino,
3 Nevada, Tehama, and Tuolumne and such other counties as may
4 be determined by the United States Census Bureau to be
5 nonmetropolitan counties with micropolitan areas in the future.

6 (e) A jurisdiction is considered suburban if the jurisdiction does
7 not meet the requirements of clauses (i) and (ii) of subparagraph
8 (B) of paragraph (3) of subdivision (c) and is located in a
9 Metropolitan Statistical Area (MSA) of less than 2,000,000 in
10 population, unless that jurisdiction's population is greater than
11 100,000, in which case it is considered metropolitan. Counties,
12 not including the City and County of San Francisco, will be
13 considered suburban unless they are in a MSA of 2,000,000 or
14 greater in population in which case they are considered
15 metropolitan.

16 (f) A jurisdiction is considered metropolitan if the jurisdiction
17 does not meet the requirements for "suburban area" above and is
18 located in a MSA of 2,000,000 or greater in population, unless
19 that jurisdiction's population is less than 25,000 in which case it
20 is considered suburban.

21 (g) For sites described in paragraph (3) of subdivision (b), the
22 city or county shall specify the additional development potential
23 for each site within the planning period and shall provide an
24 explanation of the methodology used to determine the development
25 potential. The methodology shall consider factors including the
26 extent to which existing uses may constitute an impediment to
27 additional residential development, development trends, market
28 conditions, and regulatory or other incentives or standards to
29 encourage additional residential development on these sites.

30 (h) The program required by subparagraph (A) of paragraph (1)
31 of subdivision (c) of Section 65583 shall accommodate 100 percent
32 of the need for housing for very low and low-income households
33 allocated pursuant to Section 65584 for which site capacity has
34 not been identified in the inventory of sites pursuant to paragraph
35 (3) of subdivision (a) on sites that shall be zoned to permit
36 owner-occupied and rental multifamily residential use by right
37 during the planning period. These sites shall be zoned with
38 minimum density and development standards that permit at least
39 16 units per site at a density of at least 16 units per acre in
40 jurisdictions described in clause (i) of subparagraph (B) of

1 paragraph (3) of subdivision (c) and at least 20 units per acre in
2 jurisdictions described in clauses (iii) and (iv) of subparagraph (B)
3 of paragraph (3) of subdivision (c). At least 50 percent of the very
4 low and low-income housing need shall be accommodated on sites
5 designated for residential use and for which nonresidential uses
6 or mixed-uses are not permitted.

7 (i) For purposes of this section and Section 65583, the phrase
8 “use by right” shall mean that the local government’s review of
9 the owner-occupied or multifamily residential use may not require
10 a conditional use permit, planned unit development permit, or other
11 discretionary local government review or approval that would
12 constitute a “project” for purposes of Division 13 (commencing
13 with Section 21000) of the Public Resources Code. Any subdivision
14 of the sites shall be subject to all laws, including, but not limited
15 to, the local government ordinance implementing the Subdivision
16 Map Act. A local ordinance may provide that “use by right” does
17 not exempt the use from design review. However, that design
18 review shall not constitute a “project” for purposes of Division 13
19 (commencing with Section 21000) of the Public Resources Code.
20 Use by right for all rental multifamily residential housing shall be
21 provided in accordance with subdivision (f) of Section 65589.5.

22 *SEC. 3. Section 65584.11 is added to the Government Code,*
23 *to read:*

24 *65584.11. A local government may count each housing unit*
25 *that meets the requirements of the jurisdiction’s sustainable*
26 *communities strategy as one and one-half units for purposes of*
27 *meeting the local government’s regional housing needs assessment.*